

P.L. 1997, CHAPTER 187, *approved August 4, 1997*
Assembly, No. 2958

1 **AN ACT** concerning illegal drug profiteering, amending N.J.S.2C:35-
2 12 and P.L. 1991, c. 329 and supplementing Title 2C of the New
3 Jersey Statutes.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. N.J.S.2C:35-12 is amended to read as follows:

9 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

10 Whenever an offense defined in this chapter specifies a mandatory
11 sentence of imprisonment which includes a minimum term during
12 which the defendant shall be ineligible for parole, [or] a mandatory
13 extended term which includes a period of parole ineligibility, or an
14 anti-drug profiteering penalty pursuant to section 2 of P.L. , c.
15 (C.) (now pending before the Legislature as this bill), the court
16 upon conviction shall impose the mandatory sentence or anti-drug
17 profiteering penalty unless the defendant has pleaded guilty pursuant
18 to a negotiated agreement or, in cases resulting in trial, the defendant
19 and the prosecution have entered into a post-conviction agreement,
20 which provides for a lesser sentence [or], period of parole ineligibility
21 or anti-drug profiteering penalty. The negotiated plea or
22 post-conviction agreement may provide for a specified term of
23 imprisonment within the range of ordinary or extended sentences
24 authorized by law, a specified period of parole ineligibility, a specified
25 fine, a specified anti-drug profiteering penalty, or other disposition.
26 In that event, the court at sentencing shall not impose a lesser term of
27 imprisonment, lesser period of parole ineligibility [or], lesser fine or
28 lesser anti-drug profiteering penalty than that expressly provided for
29 under the terms of the plea or post-conviction agreement.
30 (cf: P.L.1987, c.106, s.1)

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. (New section) An additional chapter, chapter 35A, is added to
2 Title 2C as follows:

3 N.J.S. 2C:35A-1. Short Title.

4 This act shall be known and may be cited as the "Anti-Drug
5 Profiteering Act."

6 N.J.S.2C:35A-2. Declaration of Policy and Legislative Findings.

7 The Legislature hereby finds and declares the following:

8 a. Persons who engage in drug trafficking activities for profit are
9 a form of professional criminal, and deserve enhanced punishment that
10 is specially adapted to remove the economic incentives inherent in such
11 criminal activities.

12 b. It shall be the overriding objective of the provisions of this
13 chapter to eliminate to the greatest extent possible the economic
14 incentives inherent in commercial drug distribution activities at all
15 levels within the drug distribution chain. In order to accomplish this
16 objective, it is appropriate to impose stern economic sanctions in the
17 form of monetary penalties against certain convicted drug offenders.
18 So as to ensure that such economic sanctions are specially adapted and
19 proportionate to the true nature, extent and profitability of the
20 specific criminal activities involved, such monetary penalties should
21 in appropriate cases be based upon a multiple of the street level value
22 of all the illicit substances involved. The use of such a mechanism for
23 calculating an appropriate monetary penalty will help to offset and
24 overcome the perception of some drug offenders, and especially those
25 who are well insulated within a drug trafficking network, that they face
26 only a comparatively low risk of immediate detection and punishment.
27 The Legislature, by adoption of the "Comprehensive Drug Reform
28 Act," N.J.S.2C:35-1 et al., recognized the utility of such a mechanism
29 by providing for the imposition of discretionary cash fines which may
30 be based upon three, or in some cases five, times the street value of
31 the illicit drugs involved.

32 c. The imposition of monetary penalties pursuant to this act is
33 intended to serve as an adjunct to forfeiture actions, which are
34 designed to deprive offenders of the proceeds of their criminal
35 activities and of all property used in furtherance of or to facilitate such
36 illegal activities. While the seizure and forfeiture of property in
37 accordance with the provisions of chapters 41 and 64 of this Title and
38 P.L.1994, c.121 (money laundering) remain a critically important
39 means by which to reduce the economic incentive inherent in drug
40 trafficking activities, in many instances, given the efforts undertaken
41 by offenders to conceal and disguise assets and to resort to complex
42 financial transactions and money laundering schemes, it has become
43 increasingly difficult for law enforcement agencies to establish to the
44 required degree of certainty that a given asset or interest in property
45 is subject to forfeiture. Accordingly, it is necessary and appropriate
46 to impose an in personam debt against the defendant which may be

1 satisfied by proceeding against any asset or interest in property
2 belonging to the defendant, whether or not such property can be
3 directly or indirectly linked to criminal activity.

4 d. In order to ensure the maximum deterrent effect of imposing
5 such specially adapted economic sanctions as are required pursuant to
6 the provisions of this act, it shall be the policy of this State to enforce
7 the judgment and to collect the entire debt, or the greatest possible
8 portion thereof, as soon as is feasible following the imposition of the
9 penalty, taking full advantage, where necessary, of this State's long
10 arm jurisdiction and the full faith and credit clause of the Constitution
11 of the United States.

12 N.J.S.2C:35A-3. Criteria for Imposition of Anti-Drug Profiteering
13 Penalty.

14 a. In addition to any other disposition authorized by this title,
15 including but not limited to any fines which may be imposed pursuant
16 to the provisions of N.J.S.2C:43-3 and except as may be provided by
17 section 5 of this chapter, where a person has been convicted of a crime
18 defined in chapter 35 or 36 of this Title or an attempt or conspiracy to
19 commit such a crime, the court shall, upon the application of the
20 prosecutor, sentence the person to pay a monetary penalty in an
21 amount determined pursuant to section 4 of this chapter, provided the
22 court finds at a hearing, which may occur at the time of sentencing,
23 that the prosecutor has established by a preponderance of the evidence
24 one or more of the grounds specified in this section. The findings of
25 the court shall be incorporated in the record, and in making its
26 findings, the court shall take judicial notice of any evidence, testimony
27 or information adduced at the trial, plea hearing or other court
28 proceedings and shall also consider the presentence report and any
29 other relevant information.

30 b. Any of the following shall constitute grounds for imposing an
31 Anti-Drug Profiteering Penalty:

32 (1) The defendant was convicted of: (a) a violation of
33 N.J.S.2C:35-3 (leader of narcotics trafficking network), or (b) a
34 violation of subsection g. of N.J.S.2C:5-2 (leader of organized crime),
35 or (c) an offense defined in chapter 41 of this Title (racketeering)
36 which involved the manufacture, distribution, possession with intent
37 to distribute or transportation of any controlled dangerous substance
38 or controlled substance analog.

39 (2) The defendant is a drug profiteer. A defendant is a drug
40 profiteer when the conduct constituting the crime shows that the
41 person has knowingly engaged in the illegal manufacture, distribution
42 or transportation of any controlled dangerous substance, controlled
43 substance analog or drug paraphernalia as a substantial source of
44 livelihood. In making its determination, the court may consider all of
45 the attending circumstances, including but not limited to the
46 defendant's role in the criminal activity, the nature, amount and purity

1 of the substance involved, the amount of cash or currency involved,
2 the extent and accumulation of the defendant's assets during the course
3 of the criminal activity and the defendant's net worth and his
4 expenditures in relation to his legitimate sources of income.

5 (3) The defendant is a wholesale drug distributor. (a) A defendant
6 is a wholesale drug distributor when the conduct constituting the crime
7 involves the manufacture, distribution or intended or attempted
8 distribution of a controlled dangerous substance or controlled
9 substance analog to any other person for pecuniary gain, knowing,
10 believing, or under circumstances where it reasonably could be
11 assumed that such other person would in turn distribute the substance
12 to another or others for pecuniary gain. It shall not be necessary for
13 the prosecution to establish to whom the substance was distributed or
14 intended or attempted to be distributed, and the court may draw all
15 reasonable inferences from the nature of the defendant's conduct and
16 the substance involved that such other person, while not specifically
17 identified, would in turn distribute the substance to another or others
18 for pecuniary gain. In making its determination, the court shall
19 consider all of the attending circumstances, including but not limited
20 to the defendant's role in the criminal activity, the nature, amount and
21 purity of the substance involved, and the likelihood that a substance of
22 such purity would be intended to be distributed directly to the ultimate
23 consumer of the substance.

24 (b) Notwithstanding that the prosecutor has established that the
25 defendant is a wholesale drug distributor within the meaning of this
26 paragraph, the court shall not impose an anti-drug profiteering penalty
27 on that ground if the defendant establishes by a preponderance of the
28 evidence at the hearing that his participation in the conduct
29 constituting the crime was limited solely to operating a conveyance
30 used to transport a controlled dangerous substance or controlled
31 substance analog, or loading or unloading the substance into such a
32 conveyance or storage facility. Nothing in this paragraph shall be
33 construed to establish a basis for not imposing a penalty where the
34 prosecutor has established any other ground or grounds specified in
35 this section for the imposition of an anti-drug profiteering penalty.

36 (4) The defendant is a professional drug distributor. A
37 professional drug distributor is a person who has at any time, for
38 pecuniary gain, unlawfully distributed a controlled dangerous
39 substance, controlled substance analog or drug paraphernalia to three
40 or more different persons, or on five or more separate occasions
41 regardless of the number of persons to whom the substance or
42 paraphernalia was distributed.

43 c. In making its determination, the court may rely upon expert
44 opinion in the form of live testimony or by affidavit, or by such other
45 means as the court deems appropriate.

46 d. For the purposes of this chapter, an act is undertaken for

1 pecuniary gain if it involves or contemplates the transfer of anything
2 of value in exchange for a controlled dangerous substance, controlled
3 substance analog or drug paraphernalia, provided that the thing of
4 value received or intended to be received in exchange for the
5 substance or paraphernalia is or was reasonably believed to be of a
6 higher value than that expended by the defendant or by any other
7 person with whom the actor is acting in concert, to acquire or
8 manufacture the substance or paraphernalia. It shall also include any
9 act which would constitute a violation of subsection a. of N.J.S.2C:35-
10 5, N.J.S.2C:35-11 or N.J.S.2C:36-3 for which the actor was paid or
11 expected to be paid in return for performing such act. There shall be
12 a rebuttable presumption at the hearing that any manufacturing,
13 distribution or possession with intent to distribute which contemplates
14 or involves the payment or exchange of anything of value constitutes
15 an act undertaken for pecuniary gain. It shall not be necessary for the
16 prosecution to establish that any intended profit or payment was
17 actually received; nor shall it be relevant that the act, payment in
18 return for such act or the transfer of anything of value in exchange for
19 the substance or paraphernalia, occurred or was intended to occur in
20 another jurisdiction.

21 N.J.S.2C:35A-4. Calculation of Anti-Drug Profiteering Penalty.

22 a. Where the prosecutor has established one or more grounds for
23 imposing an Anti-Drug Profiteering Penalty pursuant to section 3 of
24 this chapter, the court shall assess a monetary penalty as follows:

25 (1) \$200,000.00 in the case of a crime of the first degree;
26 \$100,000.00 in the case of a crime of the second degree; \$50,000.00
27 in the case of a crime of the third degree; \$25,000.00 in the case of a
28 crime of the fourth degree; or

29 (2) an amount equal to three times the street value of all controlled
30 dangerous substances or controlled substance analogs involved, or
31 three times the market value of all drug paraphernalia involved, if this
32 amount is greater than that provided in paragraph (1) of this
33 subsection.

34 b. When the court is for any reason unable to determine the amount
35 of the penalty pursuant to paragraph (2) of subsection a., the court
36 shall assess a penalty in the amount appropriate to the degree of the
37 offense as provided in paragraph (1) of subsection a.

38 c. In determining the street value of the substance involved or the
39 market value of drug paraphernalia involved, the court shall take into
40 account all amounts of the substance or paraphernalia reasonably
41 believed to have been involved in the course of the criminal activity in
42 which the defendant knowingly participated, and it shall not be
43 relevant for the purposes of this section that some of those amounts
44 or paraphernalia were involved in acts or transactions which occurred,
45 or which were intended to occur, in another jurisdiction.

46 d. Where the prosecution requests that the court assess a penalty

1 in an amount calculated pursuant to paragraph (2) of subsection a., the
2 prosecutor shall have the burden of establishing by a preponderance of
3 the evidence the appropriate amount of the penalty to be assessed
4 pursuant to that paragraph. In making its finding, the court shall take
5 judicial notice of any evidence, testimony or information adduced at
6 trial, plea hearing or other court proceedings and shall also consider
7 the presentence report and other relevant information, including expert
8 opinion in the form of live testimony or by affidavit. The court's
9 findings shall be incorporated in the record, and such findings shall not
10 be subject to modification by an appellate court except upon a showing
11 that the finding was totally lacking support in the record or was
12 arbitrary and capricious.

13 N.J.S.2C:35A-5. Revocation or Reduction of Penalty Assessment.

14 The court shall not revoke or reduce a penalty imposed pursuant to
15 this chapter except in accordance with the provisions of N.J.S.2C:35-
16 12. An anti-drug profiteering penalty imposed pursuant to this chapter
17 shall not be deemed a fine for purposes of N.J.S.2C:46-3.

18 N.J.S.2C:35A-6. Payment Schedule.

19 The court may, for good cause shown, and subject to the provisions
20 of this section, grant permission for the payment of a penalty assessed
21 pursuant to this chapter to be made within a specified period of time
22 or in specified installments, provided however that the payment
23 schedule fixed by the court shall require the defendant to pay the
24 penalty in the shortest period of time consistent with the nature and
25 extent of his assets and his ability to pay, and further provided that the
26 prosecutor shall be afforded the opportunity to present evidence or
27 information concerning the nature, extent and location of the
28 defendant's assets or interests in property which are or might be
29 subject to levy and execution. In such event, the court may only grant
30 permission for the payment to be made within a specified period of
31 time or installments with respect to that portion of the assessed
32 penalty which would not be satisfied by the liquidation of property
33 which is or may be subject to levy and execution, unless the court finds
34 that the immediate liquidation of such property would result in undue
35 hardship to innocent persons. If no permission to make payment
36 within a specified period of time or in installments is embodied in the
37 sentence, the entire penalty shall be payable forthwith.

38 N.J.S.2C:35A-7. Relation to Other Dispositions.

39 a. An anti-drug profiteering penalty assessed pursuant to this
40 chapter shall be imposed and paid in addition to any penalty required
41 to be imposed pursuant to N.J.S.2C:35-15 and N.J.S.2C:43-3.1, any
42 fee required to be imposed pursuant to N.J.S. 2C:35-20, and any other
43 fine, penalty, fee or order for restitution which may be imposed.

44 b. An anti-drug profiteering penalty imposed pursuant to this
45 chapter shall be in addition to and not in lieu of any forfeiture or other
46 cause of action instituted pursuant to chapter 41 or 64 of this Title,

1 and nothing in this chapter shall be construed in any way to preclude,
2 preempt or limit any such cause of action. A defendant shall not be
3 entitled to receive credit toward the payment of a penalty imposed
4 pursuant to this chapter for the value of property forfeited, or subject
5 to forfeiture, pursuant to the provision of chapter 41 and 64 of this
6 Title.

7 N.J.S.2C:35A-8. Collection and Distribution.

8 All penalties assessed pursuant to this chapter shall be docketed and
9 collected as provided for collection of fines, penalties and restitution
10 in chapter 46 of this Title. The Attorney General or prosecutor may
11 prosecute an action to collect penalties imposed pursuant to this
12 chapter. All penalties assessed pursuant to this chapter shall be
13 disposed of, distributed, appropriated and used as if the collected
14 penalties were the proceeds of property forfeited pursuant to chapter
15 64 of this Title.

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17 3. Section 13 of P.L.1991, c.329 (C.2C:46-4.1) is amended to read
18 as follows:

19 13. Moneys that are collected in satisfaction of any assessment
20 imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), or
21 in satisfaction of restitution or fines imposed in accordance with the
22 provisions of Title 2C of the New Jersey Statutes or with the
23 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), shall be
24 applied in the following order:

25 a. first, in satisfaction of all assessments imposed pursuant to
26 section 2 of P.L.1979, c.396 (C.2C:43-3.1);

27 b. second, in satisfaction of any restitution ordered;

28 c. third, in satisfaction of all assessments imposed pursuant to
29 section 11 of P.L.1993, c.220 (C.2C:43-3.2);

30 d. fourth, in satisfaction of any forensic laboratory fee assessed
31 pursuant to N.J.S.2C:35-20;

32 e. fifth, in satisfaction of any mandatory Drug Enforcement and
33 Demand Reduction penalty assessed pursuant to N.J.S.2C:35-15;

34 [and]

35 f. sixth, in satisfaction of any anti-drug profiteering penalty
36 imposed pursuant to section 2 of P.L. , c. (C.) (now pending
37 before the Legislature as this bill); and

38 g. seventh, in satisfaction of any fine.

39 (cf:1995, c.281, s.3)

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41 4. This act shall take effect immediately.

STATEMENT

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This bill would impose a new "anti-drug profiteering penalty" on persons who deal large amounts of drugs for profit. The penalty, which would be imposed by the court upon the application of the prosecutor, would consist of \$200,000 where the defendant is convicted of a crime of the first degree, \$100,000 in the case of a crime of the second degree, \$50,000 in the case of a crime of the third degree and \$25,000 in the case of a crime of the fourth degree. Alternatively, the court would impose an amount equal to three times the street value of all controlled dangerous substances or controlled substance analogs involved, if this amount is greater. The penalty could be satisfied by a judgment against any of the defendant's assets.

Drug dealers could be subject to the penalty if any of the following four provisions apply:

(1) The defendant was convicted of a violation of N.J.S.2C:35-3 (leader of narcotics trafficking network); a violation of subsection g. of N.J.S.2C:5-2 (leader of organized crime); or a racketeering offense defined in chapter 41 of Title 2C of which involved drug dealing.

(2) The defendant is a "drug profiteer."

The bill provides that a defendant is a "drug profiteer" when the conduct constituting the crime of which he was convicted shows that he "has knowingly engaged in the illegal manufacture, distribution or transportation of any CDS or drug paraphernalia as a substantial source of livelihood."

(3) The defendant is a "wholesale drug distributor."

The bill provides that a defendant is a "wholesale drug distributor" when the conduct constituting the crime of which he was convicted involved the manufacture, distribution or intent to distribute a CDS to any other person for pecuniary gain, "knowing, believing, or under circumstances where it reasonably could be assumed that the other person would, in turn, distribute the CDS to another for pecuniary gain."

(4) The defendant is a "professional drug distributor." The bill provides that a defendant is a "professional drug distributor" if he, "at any time, for pecuniary gain, unlawfully distributed a CDS or drug paraphernalia to three or more different persons or on five or more separate occasions."

This bill embodies Recommendation #11 and a portion of Recommendation #4 of the Attorney General's "Report to the Governor on the Need to Update the Comprehensive Drug Reform Act of 1987," issued December 9, 1996.

Imposes anti-drug profiteering penalty against certain drug dealers.